

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ELVIS WOOTEN, <i>Pro Se</i> ,)	Case No.: 5:10 CV 1811
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
BENNIE KELLY, Warden,)	
)	
Respondent)	<u>ORDER</u>

On August 17, 2010, Petitioner Elvis Wooten, *pro se* (“Wooten”), filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his conviction for complicity to aggravated robbery and complicity to aggravated burglary. (ECF No. 1, at 1.) Petitioner raised three grounds for relief in his Petition: (1) conviction obtained by use of coerced confession, (2) denial of effective assistance of counsel, and (3) malicious prosecution. (*Id.* at 4–5.)

This case was referred to Magistrate Judge James R. Knepp II for preparation of a report and recommendation (“R&R”). The Magistrate Judge issued his R&R on August 19, 2011, recommending that the Petition be denied. (ECF No. 12.) Specifically, the Magistrate Judge concluded that grounds one and two of the Petition should be denied because the grounds are procedurally defaulted since Wooten failed to raise these precise claims in state court, and ground

three should be denied because Petitioner fails to establish that the state court's decision was "contrary to or an unreasonable application of federal law." (R & R, at 9–13, ECF No. 12.)

As of the date of this Order, Petitioner has not filed any objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds that, after *de novo* review of the Report and Recommendation and all other relevant documents, the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 12.) Consequently, Wooten's Petition is hereby denied, and final judgment is entered in favor of Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
CHIEF JUDGE
UNITED STATES DISTRICT COURT

October 31, 2011